

High court weighs whether to punish state further over school funding



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Matt Manweller, a state House Representative from the 13th District and a professor of political science at Central Washington University, chides the state Supreme Court for judicial overreach at a morning press event Wednesday on the steps of the Temple of Justice Building in Olympia, just prior to the start of the hearing regarding the McCleary school funding case. Steve Bloom sbloom@theolympian.com



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Standing on the steps of the Temple of Justice Building in Olympia to start a morning press event on Wednesday, State Representative Chad Magendanz, R-Issaquah, contends that students, parents and teachers shouldn't have to worry about public schools being shut down by any future state Supreme Court ruling. Steve Bloom sbloom@theolympian.com



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Recently retired as a professor from the Gonzaga University School of Law and currently a state Supreme Court candidate, David DeWolf outlines his concerns over what he sees as judicial overreach by the state Supreme Court on the steps of the Temple of Justice Building in Olympia, just prior to the start of Wednesday's hearing regarding the McCleary school funding case. Steve Bloom sbloom@theolympian.com



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Representing school districts statewide, rows of individual marker are placed outside of the Temple of Justice by sponsors event urging to keep Washington public schools open. The event was held just prior to the start of the hearing regarding the McCleary school funding case. Steve Bloom sbloom@theolympian.com

By Melissa Santos
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Update 10:15 a.m.: Chief Justice Barbara Madsen asked the state's lawyer, deputy solicitor general Alan Copsey, to clarify when he thinks the deadline is for the state to fully fund public schools.

She compared the conversation to a child who promises to clean his or her room "in a little while."

"I want to know when a little while is," Madsen said.

Copsey said the precise date shouldn't matter much because the state has promised to come up with a full financial solution in 2017, and "the 2017 Legislature will do what it needs to do."

But he said technically he believes the court's previous rulings set the deadline for full funding of schools as the start of the 2018-19 school year, giving the Legislature time to make minor adjustments to its school-funding plan in 2018.

The justices didn't indicate whether or not they agreed with that assessment, outside of Justice Mary Fairhurst asking why a deadline of September, 1 2017 — the start of the 2017-18 school year — shouldn't be considered the deadline.

Update 10:05 a.m.: Thomas Ahearne, the attorney for the McCleary plaintiffs, said that the state simply taking over costs being paid by school districts without adding substantial new money won't solve school-funding problems.

Such a proposal, often called a "levy swap" would reduce local school district property taxes while raising taxes at the state level to help transfer local costs to the state budget.

"Taking money away from school districts, changing the name on it, and giving it back is not a solution," Ahearne said of the idea.

But Justice Debra Stephens asked whether that actually is what the state is proposing at this time.

"I don't see the state suggesting it would" do that, Stephens said.

Update 9:45 a.m.: Justice Susan Owens questioned whether further sanctions would prove effective in getting the Legislature to take action on school-funding issues.

She noted the Legislature could quickly reverse any action the court might take to invalidate parts of the state budget or strike down tax exemptions, as the McCleary plaintiffs have suggested.

"If \$100,000 a day isn't coercive, how is announcing something else that could easily be changed by the Legislature going to be coercive?" Owens asked.

Previously in the hearing, Justice Sheryl Gordon McCloud raised a similar question about whether further sanctions would prove effective, and if not, whether they can legally be imposed.

“...If sanctions are futile, we can’t impose them,” Gordon McCloud said.

Update 9:40 a.m.: Thomas Ahearne, the attorney for the group that sued the state over school funding, says the state’s latest actions don’t amount to substantial progress toward fully funding education.

He said the state still is failing to fund the actual costs of public education, leaving those to be picked up by local school districts, a status quo the court has said is unconstitutional.

“We’ve been on this merry-go-round before,” said Ahearne, who represents parents, school districts and other groups in the McCleary case.

Update 9:22 a.m.: Speaking for the state, deputy solicitor general Alan Copsey asked the state Supreme Court to lift an order finding the state in contempt in the McCleary education-funding case.

Copsey argued lawmakers have passed a plan showing they intend to meet the court’s 2018 deadline for fully funding public schools.

But some of the court’s justices questioned how lawmakers’ latest actions differ from those the court has found insufficient in the past.

The plan lawmakers approved earlier this year doesn’t explain how the state will pay for school-employee salary costs, which are the court has said are being borne unconstitutionally by local school districts. Instead, lawmakers promised to study those problems further and take action to solve them in 2017.

“What happens if it doesn’t take place during the 2017 Legislature?” asked Justice Susan Owens. She said in her mind, the case has been going on for 40 years, long before the high court’s 2012 ruling that found the state wasn’t meeting its constitutional duty to fund public schools.

The court previously ruled decades ago that the state’s system of funding public schools was unconstitutional, but the court at that time didn’t opt to retain jurisdiction over that case like they opted to do four years ago in McCleary.

Initial post: Attorneys for Washington state and the coalition that sued the state over school funding nearly a decade ago will appear before the state Supreme Court Wednesday to argue [how the court should proceed](#) in the landmark case known as McCleary.

The high court originally ruled in 2012 that Washington state was failing to meet its constitutional obligation to fully fund public schools, and must resolve the funding gap by 2018.

The state is now [in contempt of court](#) and being [fined \\$100,000 a day](#) over the Legislature's failure to deliver a plan to meet the 2018 funding deadline.

Attorneys for the state will argue Wednesday [that a bill lawmakers passed earlier this year](#) — [Senate Bill 6195](#) — constitutes the detailed phase-in plan the court has been asking for since January 2014. In briefs recently filed with the court, the state's lawyers have argued the court should end the sanctions and lift the contempt order.

Meanwhile, attorneys for the group of parents, school districts and education advocates that sued the state say that bill is nothing more than an empty promise, and that sanctions against the state should be increased.

The hearing begins at 9 a.m. Wednesday. Demonstrators on both sides of the issue are expected to gather beforehand on the steps of the Temple of Justice in Olympia.

While lawmakers have poured billions more dollars into public education since the 2012 McCleary ruling, they have left one of the thorniest problems until the last minute: Ending the unconstitutional use of local school district levies to pay for school-employee salaries.

The court has said that paying teachers and other school employees is a basic education expenditure that should be borne by the state, not local school districts.

The plan lawmakers passed earlier this year doesn't say how the Legislature plans to solve the salary problem, or how much it will cost for the state pick up the personnel costs that are being unconstitutionally paid for by local school districts.

Instead, the measure [created another task force to study the issue](#), while pledging to come up with a solution in 2017.

The court's nine justices won't issue a decision Wednesday about whether or not to continue sanctions against the state.

A decision is expected in the coming weeks or months, prior to the Legislature's scheduled return to Olympia in January.

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